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February 16, 2018

Mr. David Lasensky, President Accurate Recycling Corporation 508 E Baltimore Ave Lansdowne, PA 19050	Mr. David Lasensky, President Accurate Recycling Corporation 26 S 5th St. Fernwood, PA 19050
Administrator U.S. Environmental Protection Agency Mail Code: 1101A 1200 Pennsylvania Avenue, N.W. Washington, DC 20460	Attorney General of the United States U.S. Department of Justice 950 Pennsylvania Avenue, N.W. Washington, DC 20530-0001
Regional Administrator U.S. EPA, Region 3 1650 Arch St. Philadelphia, PA 19103-2029	Administrator Pennsylvania Department of Environmental Protection Rachel Carson State Office Building 400 Market Street Harrisburg, PA 17101
Regional Administrator Pennsylvania Department of Environmental Protection Southeast Regional Office 2 East Main Street Norristown, PA 19401	

**Re: Notice of Violation and Intent to File Suit under the Clean Water Act**

To Whom It May Concern:

Brodsky & Smith, LLC ("Brodsky Smith") represents Kristen Devlin ("Plaintiff") a citizen of the Commonwealth of Pennsylvania. This letter is to give notice that Brodsky Smith, on Plaintiff's behalf, intends to file a civil action against Accurate Recycling Corporation ("Accurate Recycling") for violations of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* ("Clean Water Act" or "CWA") and the Pennsylvania Clean Streams Law (the "Pa. CSL"), 35 P.S. § 691.1 *et seq.* at Accurate Recycling's facility located 508 E Baltimore Ave, Lansdowne, PA 19050 (the "Facility").

Plaintiff is a citizen of the Commonwealth of Pennsylvania who is concerned with the environmental health of the Delaware River, uses and enjoys the waters of the Darby Creek, the Delaware River, their inflows, and other areas of the overall Delaware River Watershed, of which the Darby Creek is a part. Plaintiff's use and enjoyment of these waters are negatively affected by the pollution caused by Accurate Recycling's operations. Additionally, Plaintiff acts in the interest of the general public to prevent pollution

in these waterways, for the benefit of their ecosystems, and for the benefits of all individuals and communities who use these waterways for various recreational, educational, and spiritual purposes.

This letter addresses Accurate Recycling's unlawful operation of a facility without proper coverage under either (i) the PAG-03 National Pollutant Discharge Elimination System ("NPDES") General Permit for Discharges of Stormwater Associated with Industrial Activity (the "General Permit"); or (ii) an applicable individual NPDES permit. Furthermore, by operating in violation of the General Permit, Accurate Recycling's Facility discharges stormwater, which likely contains pollutants from the Facility's industrial activities, via indirect flow into the Darby Creek, the Delaware River and the overall Delaware River Watershed, of which the Darby Creek is a part. Specifically, investigation of the Facility has uncovered significant, ongoing, and continuous violations of the CWA, Pa. CSL, and the General Permit.<sup>1</sup>

CWA section 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA section 505(a), a citizen must give notice of his or her intent to file suit. 33 U.S.C. § 1365(b). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the State in which the violations occur. As required by section 505(b), this Notice of Violation and Intent to File Suit provides notice to Accurate Recycling of the violations that have occurred and which continue to occur at the Facility. After the expiration of sixty (60) days from the date of this Notice of Violation and the Intent to File Suit, Plaintiff intends to file suit in federal court against Accurate Recycling under CWA section 505(a) for the violations described more fully below.

During the 60-day notice period, Plaintiff is willing to discuss effective remedies for the violations noticed in this letter. We suggest that Accurate Recycling contact Plaintiff's attorneys at Brodsky & Smith within the next twenty (20) days so that these discussions may be completed by the conclusion of the 60-day notice period. Please note that we do not intend to delay the filing of a complaint in federal court, and service of the complaint shortly thereafter, even if discussions are continuing when the notice period ends.

## **I. THE LOCATION OF THE ALLEGED VIOLATIONS**

### **A. The Facility**

Accurate Recycling's Facility is located at 508 E Baltimore Ave, Lansdowne, PA 19050. At the Facility, Accurate Recycling operates as a waste paper, metal, and baled cardboard recycling facility. The Facility's industrial activities fall under Standard Industrial Classification ("SIC") Code 5093, relating to scrap and waste recycling facilities, requiring the Facility to obtain coverage under the General Permit. *See*, General Permit, Fact Sheet, PAG-03 Appendix § P, p. 4. In addition, the aforementioned industrial processes occurring relate to metal recycling. Other activities likely carried out in the regular course of business at the Facility include storage of fuel and other oils, maintenance, equipment storage, and waste storage. Repair and maintenance activities carried out at the Facility include, but are not limited to, electrical, plumbing, roofing, asphalt, concrete, and utilities repairs as well as janitorial duties. Possible pollutants from the Facility include pH, Oil & Grease ("O & G"), total suspended solids ("TSS"), Chemical Oxygen Demand ("COD"), waste oils, lubricants, fuel, trash, debris, hazardous materials, heavy metals such as Iron, Copper, Aluminum, Lead, Zinc, and other pollutants. Stormwater from the Facility discharges, indirectly, into the Darby Creek and the overall Delaware River Watershed.

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<sup>1</sup> On September 24, 2016, the Pennsylvania Department of Environmental Protection (the "DEP") adopted an updated NPDES General Permit for Discharges of Stormwater Associated with Industrial Activity (PAG-03) (the "General Permit"). The changes made in the updated PAG-03 General Permit were adopted to be consistent with the United States Environmental Protection Agency's ("EPA") Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (the "MSGP") that was reissued and updated in 2015. As of September 24, 2016, the PAG-03 General Permit has superseded and rescinded the Previous PAG-03 General Permit except for purposes of enforcement actions brought pursuant to the prior permit.



## **B. The Affected Water**

The Darby Creek, Delaware River and overall Delaware River Watershed are waters of the United States and waters of the Commonwealth of Pennsylvania. The CWA requires that water bodies such as the Darby Creek, the Delaware River and overall the Delaware River Watershed meet water quality objectives that protect specific “beneficial uses.” The beneficial uses of the Darby Creek, the Delaware River and overall Delaware River Watershed include commercial and sport fishing, estuarine habitat, fish migration, navigation, preservation of rare and endangered species, water contact and non-contact recreation, shellfish harvesting, fish spawning, and wildlife habitat. Contaminated stormwater from the Facility adversely affects the water quality of the Darby Creek, the Delaware River and overall Delaware River Watershed, and threatens the beneficial uses and ecosystem of these watersheds, which includes habitats for threatened and endangered species.

## **II. THE FACILITY’S VIOLATIONS OF THE CLEAN WATER ACT**

It is unlawful to discharge pollutants to waters of the United States, such as the Darby Creek and the Delaware River, without an NPDES permit or in violation of the terms and conditions of an NPDES permit. CWA § 301(a), 33 U.S.C. § 1311(a); *see also* CWA § 402(p), 33 U.S.C. § 1342(p) (requiring NPDES permit issuance for the discharge of stormwater associated with industrial activities). The General Permit authorizes certain discharges of stormwater, conditioned on compliance with its terms.

Information available to Plaintiff indicates that Accurate Recycling has not obtained coverage for stormwater discharge from the Facility under the General Permit, and therefore, stormwater discharges from the Facility have violated several terms of the General Permit and the CWA. Apart from discharges that comply with the General Permit, the Facility is in violation of the CWA every time it discharges stormwater into waters of the United States.

### **A. Discharges in Excess of Effluent Limitations**

The Effluent Limitations of the General Permit prohibit the discharge of pollutants from the Facility in concentrations above the level commensurate with the application of best management practices (“BMPs”) specified at General Permit § C(II), and in the sector specific appendices to the General Permit, which are consistent with the sector specific effluent limitations contained in the EPA MSGP. These benchmark values are reiterated and incorporated into the General Permit. *See* General Permit, Appendices. These effluent limitations are listed in Attachment 1 to this letter.

The General Permit and the MSGP have specific numeric effluent limitations based upon Standard Industrial Classification (“SIC”) codes. Furthermore, these SIC code based benchmark values are reiterated and incorporated into the General Permit. *See* General Permit Fact Sheet PAG-03 Appendix. Notably, Accurate Recycling is classified as falling under SIC 5093, relating to Scrap and Waste Recycling, requiring it to be within numerical effluent limitations for (i) Total Suspended Solids (“TSS”); (ii) Oil and Grease (“O&G”); (iii) Chemical Oxygen Demand (“COD”); (iv) Copper; (v) Lead; and (vi) Zinc. Based on the Facility’s lack of coverage under the General Permit or an applicable individual permit issued by the DEP, Accurate Recycling has not met this requirement and has been in violation of the Industrial Period since January 1, 2017.

The Facility’s lack of coverage under the General Permit has resulted in Accurate Recycling’s failure to adequately monitor numerical pollutant discharge values for every instance of stormwater discharge since January 1, 2017. This lack of coverage and subsequent inadequate self-monitoring indicate that Accurate Recycling has failed and is failing to employ measures that constitute BMPs in violation of the requirements of the General Permit.

Accurate Recycling’s ongoing discharges of stormwater from the Facility without proper coverage under the General Permit or an applicable individual permit issued by the DEP, and subsequent lack of monitoring of pollutant discharge values have likely led to Accurate Recycling discharging stormwater containing levels of pollutants above EPA Benchmark values, and further demonstrate that Accurate

Recycling has not developed and implemented sufficient BMPs at the Facility. Proper BMPs could include, but are not limited to, moving certain pollution-generating activities under cover or indoors capturing and effectively filtering or otherwise treating all stormwater prior to discharge, frequent sweeping to reduce build-up of pollutants on-site, installing filters on downspouts and storm drains, and other similar measures.

Accurate Recycling's failure to obtain coverage for the Facility under the General Permit, and develop and/or implement adequate pollution controls to meet BMPs at the Facility violates, and will continue to violate, the CWA, the Pa CST, and the General Permit each and every day Accurate Recycling discharges stormwater without meeting BMPs. Plaintiff alleges that Accurate Recycling has discharged stormwater containing excessive levels of pollutants from the Facility to the Darby Creek, the Delaware River, and the overall Delaware River Watershed during at least every significant local rain event over 0.1 inches since January 1, 2017.<sup>2</sup> Attachment 3 compiles all dates since January 1, 2017 when a significant rain event occurred. Accurate Recycling is subject to civil penalties for each violation of the General Permit, the CWA, and the Pa CST since January 1, 2017.

#### **B. Discharges Impairing Receiving Waters**

The General Permit's Discharge Prohibitions disallow stormwater discharges that cause or threaten to cause pollution, contamination, or nuisance. *See* General Permit, Part A, §§ I(B), I(C). Specifically, the General Permit disallows any discharges into receiving waters, including the Darby Creek, the Delaware River and Delaware River Watershed into which Stormwater discharges from the facility flow, that constitute the following:

- Floating solids, scum, sheen or substances that result in observed deposits in the receiving water. 25 Pa. Code § 92a.41(c).
- Oil and grease in amounts that cause a film or sheen upon or discoloration of the waters of this Commonwealth or adjoining shoreline. 25 Pa. Code §§ 92a.47(a)(7), 95.2(2).
- Substances in concentration or amounts sufficient to be inimical or harmful to the water uses to be protected or to human, animal, plant or aquatic life. 25 Pa. Code § 93.6(a).
- Foam or substances that produce an observable change in color, taste, odor or turbidity of the receiving water. 25 Pa. Code § 92a.41(c).

Plaintiff alleges that Accurate Recycling's stormwater discharges have caused or contributed to violations of discharge prohibitions contained in the effluent limitations of the General Permit. These allegations are based on the Facility's lack of coverage under the General Permit and discharges of stormwater during such period. These stormwater discharges occurring without proper permitting indicate that Accurate Recycling's discharges are causing or threatening to cause pollution, contamination, and/or nuisance; adversely impacting human health or the environment; and violating applicable discharge prohibitions and effluent limitations.

Plaintiff alleges that each day that Accurate Recycling has discharged stormwater from the Facility without appropriate coverage under the General Permit, Accurate Recycling's stormwater has and/or may have contained levels of pollutants that violate the discharge prohibitions and effluent limitations in the General Permit as applicable to the Darby Creek, the Delaware River and the overall Delaware River Watershed. Plaintiff alleges that Accurate Recycling has discharged stormwater from the Facility that violates the discharge prohibitions and effluent limitations in the General Permit as applicable to the Darby Creek, the Delaware River and overall Delaware River Watershed during at least every significant local rain event over 0.1 inches since January 1, 2017. *See* Attachment 3. Each discharge from the Facility that violates

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<sup>2</sup> Significant local rain events are reflected in the rain gauge data available at: <http://www.ncdc.noaa.gov/cdo-web/search>.



the discharge prohibitions and effluent limitations in the General Permit, constitutes a separate violation of the General Permit, the CWA, and the Pa CST, and Accurate Recycling is subject to penalties for each violation of the General Permit, the CWA, and the Pa CST since January 1, 2017.

**C. Failure to Develop and Implement an Adequate Preparedness, Prevention and Contingency Plan**

The General Permit requires dischargers to develop and implement an adequate Preparedness, Prevention and Contingency Plan (a "PPC Plan"). *See* General Permit, Part C, § IV. The General Permit also requires dischargers to review and if necessary update the PPC Plan on an annual basis, at a minimum, and anytime a specific event triggers such a revision according to the General Permit. *See* General Permit, Part C, § IV(B).

The PPC Plan must include, among other requirements, the following: a description and assessment of all Accurate Recycling potential pollutant sources; a description of the BMPs that will reduce or prevent pollutants in stormwater discharges; responsive actions required to be taken in the event of a spill or other pollution incidents; identify areas of the Facility in which, due to topography or other factors, have a high potential for soil erosion, and identify measures to limit such erosion; address security measures to prevent accidental or intentional entry which could result in an unintentional discharge of pollutants; a plan for training employees and contractors on pollution prevention, BMPs, and emergency response measures; identify releases of "Water Priority Chemicals" within the previous three years; and, identify spill prevention control and countermeasure plans that may be used to meet the requirements of the General Permit. *See* General Permit, Part C, § IV(A).

As Accurate Recycling has failed to obtain coverage for the Facility under the General Permit, Plaintiff alleges and informs Accurate Recycling that it has failed to prepare and/or implement an adequate PPC Plan and has therefore failed to satisfy each of the requirements of General Permit, Part C, § IV.

Accordingly, Accurate Recycling has violated the CWA each and every day that it has failed to develop and/or implement an adequate PPC Plan meeting all of the requirements of General Permit, Part C, § IV(B), and Accurate Recycling will continue to be in violation every day until it obtains coverage for the Facility under the General Permit and develops and implements an adequate PPC Plan. Accurate Recycling is subject to penalties for each violation of the General Permit and the CWA occurring since January 1, 2017.

**D. Failure to Develop and Implement Adequate Stormwater Monitoring and Recordkeeping**

The General Permit requires facility operators to develop and implement a Stormwater Self-Monitoring, Reporting and Recordkeeping Program. *See* General Permit, Part A § III, Part C § V. The General Permit requires that facilities create and implement a Stormwater Self-Monitoring, Reporting and Recordkeeping Program to ensure that each of the facility's stormwater discharges comply with the Discharge Prohibitions and Effluent Limitations specified in the General Permit. Facility operators must ensure that their Stormwater Self-Monitoring, Reporting and Recordkeeping Program practices reduce or prevent pollutants in stormwater and authorized non-stormwater discharges as well as evaluate and revise their practices to meet changing conditions at the facility. *Id.* This may include revising the PPC Plan as required by General Permit, Part C, § IV(B).

The Stormwater Self-Monitoring, Reporting and Recordkeeping Program must measure the effectiveness of BMPs used to prevent or reduce pollutants in stormwater discharges, and facility operators must revise the Stormwater Self-Monitoring, Reporting and Recordkeeping Program whenever appropriate. *See* General Permit, Part A § III, Part C § V. The General Permit requires facility operators to monitor and collect samples of stormwater discharges from all outfall areas identified as such. *Id.* Facility operators are also required to provide an explanation of monitoring methods describing how the facility's monitoring program will satisfy these objectives. *Id.*

As Accurate Recycling has failed to obtain coverage for the Facility under the General Permit, Accurate Recycling has been operating the Facility with an inadequately developed and/or inadequately implemented Stormwater Self-Monitoring, Reporting and Recordkeeping Program, in violation of the substantive and procedural requirements set forth in the General Permit.

Additionally, The General Permit and the MSGP have specific numeric effluent limitations based upon Standard Industrial Classification ("SIC") codes. Furthermore, these SIC code based benchmark values are reiterated and incorporated into the General Permit. *See* General Permit Fact Sheet PAG-03 Appendix. Notably, Accurate Recycling is classified as falling under SIC 5093, relating to Scrap and Waste Recycling, requiring it to be within numerical effluent limitations for (i) Total Suspended Solids ("TSS"); (ii) Oil and Grease ("O&G"); (iii) Chemical Oxygen Demand ("COD"); (iv) Copper; (v) Lead; and (vi) Zinc. As previously stated, and in clear violation of the terms of the General Permit, Accurate Recycling has consistently failed to adequately monitor its stormwater discharges since January 1, 2017 due to the Facility's lack of coverage under the General Permit. Therefore, Accurate Recycling has not effectively identified or responded to compliance problems at the Facility or resulted in effective revision of any such BMPs in use to address such ongoing problems as required by the General Permit.

As a part of the MRP, the General Permit specifies that facility operators take representative samples and measurements to monitor compliance with the General Permit. *See* General Permit Part A, § III(A)(1). Furthermore, facility operators shall collect all samples from discharges resulting from a storm event that is greater than 0.1 inch in magnitude and that occurs at least 72 hours from the previously measurable storm event. *See* General Permit Part C, § V(D). Due to Accurate Recycling's failure to obtain coverage for the Facility under the General Permit, Accurate Recycling has not conducted any stormwater sampling whatsoever since January 1, 2017.

As a result of Accurate Recycling's failure to obtain coverage for the Facility under the General Permit and its subsequent failure to adequately develop and/or implement an adequate Stormwater Self-Monitoring, Reporting and Recordkeeping Program at the Facility, Accurate Recycling has been in daily and continuous violation of the General Permit and the CWA each and every day since January 1, 2017. These violations are ongoing. Accurate Recycling will continue to be in violation of the monitoring and reporting requirement each day that Accurate Recycling fails to obtain coverage under the General Permit and fails to adequately develop and/or implement an effective MRP at the Facility. Accurate Recycling is subject to penalties for each violation of the General Permit and the CWA occurring since January 1, 2017.

#### **E. Unpermitted Discharges**

Section 301(a) of the CWA prohibits the discharge of any pollutant into waters of the United States unless the discharge is authorized by a NPDES Permit issued pursuant to Section 402 of the CWA. *See* 33 U.S.C. §§ 1311(a), 1342.

Notably, Accurate Recycling has failed to obtain coverage for the Facility under the General Permit or a separate NPDES permit. Notably, as Accurate Recycling has not obtained coverage under either the General Permit or a separate NPDES, each and every discharge from the Facility described herein is in compliance with the General Permit has constituted and will continue to constitute a discharge without CWA Permit coverage in violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Notably, Plaintiff informs Accurate Recycling that stormwater discharges from the Facility to the Darby Creek, the Delaware River and overall Delaware River Watershed are likely to have occurred during at least every significant local rain event over 0.1 inches since January 1, 2017, at the locations described below in Attachment 2. *See* Attachments 2, 3.

#### **IV. PERSON RESPONSIBLE FOR THE VIOLATIONS**

Accurate Recycling Corporation is the person responsible of the violations at the Facility described above.



**V. NAME AND ADDRESS OF NOTICING PARTY**

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**VI. COUNSEL**

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**VII. REMEDIES**

Plaintiff intends, at the close of the 60-day notice period or thereafter, to file a citizen suit under CWA section 505(a) against Accurate Recycling for the above-referenced violations. Plaintiff will seek declaratory and injunctive relief to prevent further CWA violations pursuant to CWA sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. In addition, Plaintiff will seek civil penalties pursuant to CWA section 309(d), 33 U.S.C. § 1319(d), and 40 C.F.R. § 19.4, against Accurate Recycling in this action. The CWA imposes civil penalty liability of up to \$51,570 per day per violation for violations occurring after November 2, 2015. 33 U.S.C. § 1319(d); 40 C.F.R. § 19.4. Plaintiff will seek to recover attorneys' fees, experts' fees, and costs in accordance with CWA section 505(d), 33 U.S.C. § 1365(d).

As noted above, Plaintiff and her counsel are willing to meet with you during the 60-day notice period to discuss effective remedies for the violations noted in this letter. Please contact me to initiate these discussions.

Very truly yours,



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## ATTACHMENT 1

### EPA BENCHMARKS AND WATER QUALITY STANDARDS FOR DISCHARGES TO FRESHWATER

#### A. EPA Benchmarks, EPA MSGP; General Permit Appendix P

Parameter	Units	Benchmark Value	Source
Oil & Grease	Mg/L	30	EPA MSGP; General Permit Appendix P
Total Suspended Solids	Mg/L	100	EPA MSGP; General Permit Appendix P
Chemical Oxygen Demand	Mg/L	120	EPA MSGP; General Permit Appendix P
Total Copper	Mg/L	XXX	EPA MSGP; General Permit Appendix P
Total Lead	Mg/L	XXX	EPA MSGP; General Permit Appendix P
Total Zinc	Mg/L	XXX	EPA MSGP; General Permit Appendix P



## ATTACHMENT 2

### LIKELY LOCATIONS AND CONTRIBUTING FACTORS OF UNPERMITTED POLLUTANT AND STORMWATER DISCHARGE FROM ACCURATE RECYCLING'S FACILITY

The following table contains descriptions of the likely locations and contributing factors of unpermitted pollutant and stormwater discharge from Accurate Recycling' Facility.

Location	Description
Discharge Point: Facility yard opens onto 5 <sup>th</sup> Street	The Facility's has a wide opening onto 5 <sup>th</sup> street which would allow sheet runoff carrying debris and pollutants out of the Facility and onto the street.
Exposed Refuse and Equipment	Machinery, racks, pipes, trash and dumpsters observed on the lot are left uncovered and exposed to rainfall which sends the collected residue off of the equipment and onto 5 <sup>th</sup> street located outside of the Facility's yard leading into the public storm drain.

**ATTACHMENT 3:  
ALLEGED DATES OF QUALIFYING STORM EVENTS AT ACCURATE RECYCLING<sup>®</sup>  
FACILITY**

**January 1, 2017 – February 10, 2018**

Days with precipitation one-tenth of an inch or greater, as reported by NOAA's National Climatic Data Center, Station: Philadelphia International Airport, PA US USW00013739, when a stormwater discharge from the Facility is likely to have occurred. See, <http://www.ncdc.noaa.gov/cdo-web/search>.

<b>2017</b>	<b>2017 (Cont.)</b>	<b>2018</b>
1/2	8/2	1/4
1/3	8/5	1/12
1/7	8/7	1/23
1/11	8/15	1/28
1/17	8/18	1/30
1/18	8/22	2/2
1/20	8/23	2/4
1/22	8/29	2/7
1/23	9/2	2/10
1/24	9/5	
2/9	9/6	
2/12	9/16	
2/25	10/9	
2/28	10/12	
3/10	10/24	
3/13	10/29	
3/14	10/30	
3/28	11/5	
3/30	11/7	
3/31	11/13	
4/3	11/19	
4/4	12/5	
4/6	12/9	
4/21	12/15	
4/25	12/23	
5/5	12/24	
5/13		
5/22		
5/25		
5/29		
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